



U.S. Citizenship
and Immigration
Services

*Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy*

PUBLIC COPY

BS

DEC 15 2006

FILE:

LIN 04 188 51477

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:

PETITION:

Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maigelson

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief. For the reasons discussed below, counsel has not overcome all of the director's concerns.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Bacteriology from the University of Wisconsin-Madison. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary

merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep’t. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, cardiology research, and that the proposed benefits of her work, improved understanding of and treatments for heart disease, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien’s own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep’t of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a “unique background.” Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-

trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner obtained her Bachelor of Science degree from Shandong University in 1987 and her Master of Science from the Institute of Microbiology, Chinese Academy of Sciences in 1990. She then engaged in research at the Beijing Veterinary Medicine Company and subsequently worked as an instructor at the Institute of Microbiology. As stated above, the petitioner obtained her Ph.D. from the University of Wisconsin-Madison in 2002 and subsequently began working at that institution as a research associate in the laboratory of [REDACTED]

Professor [REDACTED], Vice Chairman of the Department of Biology at the Graduate School of the Chinese Academy of Sciences, briefly discusses the petitioner's work at that institution. Specifically, Professor [REDACTED] notes that one of the petitioner's projects, application of photosynthetic bacteria in prawn-raising, won a provincial award in 1995. Professor [REDACTED] does not assert that the petitioner's work on this project has influenced prawn-raising in China nationwide.

During her Ph.D. studies at the University of Wisconsin-Madison, the petitioner worked in the laboratory of [REDACTED]. [REDACTED] explains that the petitioner "identified the outcome of competition among the three most important fiber-digesting bacteria in the rumen, the major digestive organ in cattle and other ruminant animals." [REDACTED] identifies several issues that complicated this work and asserts that it resulted in "probably the most complete elucidations of a microbial tripartite interaction reported to date." The petitioner then researched the underlying mechanisms of these interactions, discovering a new protein, albusin B, that inhibits the growth of competitor bacteria in the rumen. The petitioner isolated and cloned albusin B, which allowed her to comprehensively analyze the amino acid sequence and nucleotide sequence of the protein, depositing the sequence in GeneBank. The petitioner was the first to perform these investigations on a ruminal bacterium. [REDACTED] notes that all of this work has been published and presented at conferences.

[REDACTED] asserts that in her laboratory, the petitioner focused on JUMONJI, a protein demonstrated by [REDACTED]'s group to be a transcriptional factor. While [REDACTED] is unclear as to whether the petitioner participated in the group's identification of JUMONJI as a transcriptional factor, [REDACTED] lists a 2000 article on JUMONJI on her curriculum vitae. This article predates when petitioner joined [REDACTED] laboratory. [REDACTED] notes that the petitioner's work on JUMONJI, which [REDACTED] does not specifically explain, was published in the *Journal of Biological Chemistry* in 2003. [REDACTED], a professor at

the Medical College of Wisconsin who met the petitioner while giving a presentation to her department, asserts that the petitioner demonstrated that “JUMONJI is a transcription factor that contains a strong repressor domain, a nuclear localization domain and a DNA-binding domain.” Dr. Lough explains that this work has “greatly advanced our understanding [of] the role JUMONJI has in heart development.”

further asserts that the petitioner “contributed significantly” to work demonstrating that JUMONJI represses the expression of atrial natriuretic factor (ANF), an important hormonal mediator of body fluid and electrolyte balance. asserts that a manuscript reporting these results was being revised and that the results “may lead to develop JUMANJI as a therapeutic factor that prevent [sic] the occurrence of heart hypertrophy.” Chair of the Department of Anatomy at University of Wisconsin-Madison, asserts that this work was presented at a conference in March 2004. In analyzing JUMONJI knock out mice, the petitioner identified new defects not apparent in mutant mice with a mixed genetic background. does not indicate that these results have been reported or presented. Finally, the petitioner made a breakthrough using the complex Cre-loxp conditional targeting biotechnology process, generating a transgenic mouse line whose JUMONJI gene is floxed with loxp genetic markers. While not yet published or presented, predicts that the outcome of this work “will further our understanding of the molecular mechanisms underlying [the] spatial role of JUMONJI in congenital heart defects as well as normal heart development.”

The petitioner provides similar letters from other professors at the University of Wisconsin-Madison and her collaborators. While they assert, in general terms, that the petitioner’s work is exceptional and beyond what most researchers accomplish, they provide no examples of independent research teams being impacted by the petitioner’s results.

In response to the director’s request for additional evidence, the petitioner provided two independent letters. an assistant professor of medicine at Harvard Medical School who was studying in Shandong China around the same time as the petitioner, provides similar information to that discussed above. does not claim to have been influenced by the petitioner and does not explain how she came to know of the petitioner’s work. We note that is a transplant immunology expert, which is not the petitioner’s field. an assistant professor at the University of Pittsburgh, claims to have known the petitioner “as an excellent and devoted scientist for many years,” but fails to explain how they met. As with the letter from does not claim to have been influenced by the petitioner and his own area of research, immunology and cancer research, in unrelated to the petitioner’s current and past research.

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795-796. CIS may even give less weight to an

opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of industry interest and positive response in the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, the most persuasive letters are those from independent references within the petitioner's narrow field who were previously aware of the petitioner through her reputation and who have applied her work.

In addition to the letters, the petitioner submitted her seven published articles and evidence of her conference presentations. The director noted that publication is expected among researchers and concluded that the petitioner had not demonstrated that her publication record stood out. Specifically, the director noted the lack of evidence that the petitioner had been widely cited. Counsel does not address this concern on appeal and the petitioner submits no evidence that she has been cited by independent research teams or comparable evidence of the impact of her articles.

The petitioner also submitted evidence that she was admitted to membership in the honor society Gamma Sigma Delta "in recognition of high scholarship, outstanding achievement or service. Academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 219, n.6.

In addition, the petitioner submitted evidence of professional memberships, but no evidence that membership in these associations is significant. Finally, the petitioner submitted evidence of formal recognition received in 1995 in China for her study on feed additives for prawns. Professional memberships and recognition for contributions are criteria for aliens of exceptional ability, a classification that normally requires an alien employment certification certified by the Department of Labor. We cannot conclude that meeting two, or even the requisite three, of the criteria for that classification warrants a waiver of that requirement. *See generally id.* at 222 (regarding experience in the alien's field, another criterion for aliens of exceptional ability).

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.